

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellant:	James M. Sheppard JR.)	Group Art Unit: 1794
)	
Serial No.	09/837,094)	
)	Confirmation No. 8428
Filing Date:	April 18, 2001)	
)	
For:	JACQUARD OR DOBBY)	
	WOVEN TEXTILE WITH)	
	GRAPHIC IMPRESSION AND)	
	A METHOD OF MAKING THE)	
	SAME)	
)	

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REPLY BRIEF

Dear Sirs:

In response to the Examiner's Answer of June 11, 2008, the following remarks are made.

The Examiner has labored mightily against this invention. It is noted that a Notice of Appeal was filed in September 2003, again in November of 2004, and again in March 2006, and finally January 2008.

There are no new grounds of rejection in this Examiner's Answer.

In the Examiner's Answer, page 3, the Examiner rejects all the claims as being unpatentable over Stark in view of Parker and Sherrill et al. On page 8, the Examiner rejects all claims as being unpatentable over Parker in view of Stark, Terrasse, and

Sherrill et al. The Examiner has had difficulty with the invention and has stretched the teachings and suggestions of the prior art in order to attempt to meet the limitations of the present invention. Some of the “stretching” statements are set forth below.

- (1) As stated in the Appeal Brief, Stark discloses printing on fabrics out of register to create a visual and aesthetically pleasing textile product. In describing the prior art, Stark discloses that it is known in the art to print fabrics in registry. Stark does not state that printing on fabrics in registry is aesthetically and visually pleasing. The Examiner, however, makes this argument frequently in all grounds of rejections.
- (2) On page 4 of the Examiner’s Answer, the Examiner characterizes Parker as having a first color yarn to form the background of the design and a second color to form the image of the design. Parker does not disclose the word image. Parker discloses that you can form “a stripe or stripes” and in another embodiment “cross borders.” These certainly are not images in the sense of what is disclosed by Stark, for example, or the present invention. Furthermore, the Examiner states that Parker discloses “other designs.” Other than the stripe or stripes and cross borders, Parker discloses no other designs. In essence, Parker merely states that if you have stripes or cross borders, you can use two colors and have the reverse color on the opposite side.
- (3) The Examiner admits that Stark and Parker do not teach the fabric has a pattern with a central region and border. The Examiner then relies at the bottom of page 5 of the Examiner’s Answer on the case of *In re Seid*. The Examiner states that the printed matter is not functionally related to the substrate. Therefore, the Examiner concludes that the limitation of a central area and a border is not a limitation entitled to patentable weight. Clearly, claim 21 includes functional language. One example of functional language is “said border on said one side is capable of masking said graphic impression that may overlap onto said border from said central area on said one side.” This is clearly functional language. This

clearly positions the border to be on the outside the central area. Another example of functional language in claim 21 is “said central area on said second side is capable of masking any potential bleed through of said graphic impression from said central area of said one side.”

- (4) The Examiner attempts to make light of this entire portion of claim 21 by concluding that “the contrasting color regions adjacent and on the opposite side of the fabric would inherently be capable of masking printing *which is a similar color*” (Appellant’s emphasis). The Examiner assumes that the printing would be in a similar color. This is not a limitation in claim 21. Perhaps the color of the central area on the reverse side of the fabric would mask a similar color, but what about all other colors in the universe that are not similar? Claim 21 is not limited to masking a color “*which is a similar color.*” It masks all colors.
- (5) In the lower portion of page 6 of the Examiner’s Answer, the Examiner comes to the conclusion that “since Stark and Parker both suggest that various known weave patterns and print patterns can be used to produce a finished printed fabric, it would be obvious to one skilled in the art to choose a print pattern with border regions and an open central area for designs to provide a large central area to place the printed pattern and create an aesthetically pleasing appearance in the finished fabric.” This is without a teaching suggestion or disclosure by either Stark or Parker et al. Where in Stark or Parker et al. is a border mentioned? Where in Stark or Parker et al. is an open central area for designs set forth? Where is there a disclosure in Stark and Parker et al. that states that such a pattern would create “an aesthetically pleasing appearance?” The only mention of an aesthetically pleasing appearance is in Stark, and that only relates to “an out of register pattern on the surface of the fabric as set forth in column 1, lines 50-55. The Examiner is taking great liberties with the teachings of Stark and Parker et al. and is stretching the teachings of these references in an attempt to meet the limitations of claim 21.

- (6) Claim 21 also calls for shearing the first side to a height of about 75% to 95% of the height of the other side and looming that side. For this limitation, the Examiner relies on Sherrill et al. Sherrill teaches shearing and blooming on one side of a textile product. Sherrill does not teach which side should be sheared and bloomed and furthermore, Sherrill does not teach that shearing which is 75% to 95% of the height of the pile.
- (7) At the middle of page 7 of the Examiner's Answer, the Examiner states, "further, the prior art references also disclose that the patterns which can be used to produce the towel design are virtually unlimited. What prior art references? Stark, Parker, Sherrill et al., and Terrasse are the only four references mentioned or employed in this appeal. What references disclose virtually unlimited patterns, which can be used to produce the towel designs? Obviously, the Examiner is again stretching Stark, Parker et al., Terrasse, and Sherrill et al. to meet the limitations of claim 21.
- (8) In the lower portion of page 7 of the Examiner's Answer, the Examiner states that Sherrill et al. has "a border region surrounding a center area with a design or graphic." However, this is not the limitation in claim 21. Claim 21 clearly calls for a border "adjacent each edge of said towel." The border disclosed in Sherrill et al. is not adjacent each edge of the towel. In fact, none of these references discloses a border adjacent the edge of the towel. This is contrary to the conclusion that the Examiner draws near the bottom of page 7 of the Examiner's Answer when the Examiner states, "as shown in Figure 1 (of Sherrill et al.), the towel is produced with the border design on all four edges." This is simply not correct.
- (9) On page 8 of the Examiner's Answer, the Examiner discusses the second rejection of Parker et al. in view of Stark, Terrasse, and Sherrill et al. Just a few lines further, the Examiner states that "further, Parker et al. teach that the pattern can be woven to have contrasting color borders." Parker et al. teach a stripe or stripes

which can be reversed on the opposite side with respect to the colors. Parker does not teach contrasting color borders. None of the references teaches this feature.

- (10) The Examiner notes that Stark teaches printed designs, which are “in or out of registry” that produce finished products “which are aesthetically attractive to the consumer.” Again, Stark does not teach that in registry designs are aesthetically attractive to the consumer. Then the Examiner concludes that Stark would teach one skilled in the art to use a printed design on Parker et al. Because Parker only teaches a stripe or stripes and in another embodiment of the invention cross borders, would one skilled in the art use a print to out-register a stripe or stripes or out-register a cross border? It is unclear in the Examiner’s rejection how Stark would modify Parker. In the bottom half of page 8 of the Examiner’s answer, the Examiner admits that Stark and Parker do not teach specific design patterns such as a towel having borders at each edge and a central area (contrast this to the Examiner’s statement regarding the first rejection of Stark in view of Parker and Sherrill).
- (11) The Examiner relies on Terrasse for a true jacquard woven disclosure. However, it is noted that Terrasse doesn’t teach a border as called for by the present invention in that the border of Terrasse et al is a much more complicated design and is actually made up of multiple stripes near each edge of the textile. However, atop page 9, the Examiner concludes, with the teaching of Terrasse, one skilled in the art can create “all types of borders formed by using two different colored yarns to produce various combinations.” The Examiner refers to column 4, lines 1-13 of Terrasse et al. However, Terrasse et al. do not teach that all types of borders may be formed. Again, the Examiner must stretch the teachings of Terrasse in order to meet the limitations of claim 1.

In the response to arguments section atop page 11 of the Examiner’s Answer, the Examiner discusses applicant’s disclosure concerning known prior art. While the

Examiner comments on this, it is interesting to note that there is not a single usage in the Examiner's rejections that relies on Appellant's disclosure.

SUMMARY

In summary, the Appeal Brief sets forth the issues to be decided, in clear and concise terms. The Board is asked, once again, to affirm patentability of this invention.

Respectfully submitted,

Date: August 11, 2008

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